

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE MARCH 30, 2005

SENATE BILL

No. 648

Introduced by Senator Margett

February 22, 2005

An act to amend ~~Section~~ *Sections 21091 and 21165* of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as amended, Margett. CEQA: lead agencies: determinations.

The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. ~~CEQA~~ *Existing law specifies time periods for public review for a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and for review by the State Clearinghouse.*

This bill would establish time periods for public review and for review and comment by state agencies as established by the State Clearinghouse of these documents, as specified.

CEQA authorizes any public agency, or in certain cases, the project applicant, in the event that a dispute arises with respect to a project to be carried out or approved by two or more public agencies, as to which is the lead agency, to submit the question to the Office of

Planning and Research, and the office is required to designate, within 21 days of receiving the request, the lead agency, giving due consideration to the capacity of the agency to adequately fulfill the requirements of the act.

This bill would provide that, for purposes of those provisions requiring the designation by the office of a lead agency, a “dispute” means a contested, active difference of opinion between 2 or more public agencies as to which of those agencies shall prepare any necessary environmental document, and that a dispute exists where a public agency claims that it either has or does not have the obligation to prepare an environmental document. The bill would prohibit the office from designating a lead agency in the absence of such a dispute.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21091 of the Public Resources Code is
2 amended to read:

3 21091. (a) The public review period for a draft
4 environmental impact report may not be less than 30 days. If the
5 draft environmental impact report is submitted to the State
6 Clearinghouse for review, the review period shall be at least 45
7 days, and the lead agency shall provide a sufficient number of
8 copies of the document to the State Clearinghouse for review and
9 comment by state agencies.

10 (b) The public review period for a proposed negative
11 declaration or proposed mitigated negative declaration may not
12 be less than 20 days. If the proposed negative declaration or
13 proposed mitigated negative declaration is submitted to the State
14 Clearinghouse for review, the review period shall be at least 30
15 days, and the lead agency shall provide a sufficient number of
16 copies of the document to the State Clearinghouse for review and
17 comment by state agencies.

18 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
19 environmental impact report, proposed negative declaration, or
20 proposed mitigated negative declaration is submitted to the State
21 Clearinghouse for review and the period of review by the State
22 Clearinghouse is longer than the public review period established
23 pursuant to subdivision (a) or (b), whichever is applicable, the

1 public review period shall be at least as long as the period of
2 review *and comment by state agencies as established* by the State
3 Clearinghouse.

4 (2) *The public review period and the state agency review*
5 *period may, but are not required to, begin and end at the same*
6 *time. Day one of the state agency review period shall be the date*
7 *that the State Clearinghouse distributes the document to state*
8 *agencies.*

9 (3) *If the submittal of a CEQA document is determined by the*
10 *State Clearinghouse to be complete, the State Clearinghouse*
11 *shall distribute the document within three working days from the*
12 *date of receipt. The State Clearinghouse shall specify the*
13 *information that will be required in order to determine the*
14 *completeness of the submittal of a CEQA document.*

15 (d) (1) The lead agency shall consider comments it receives
16 on a draft environmental impact report, proposed negative
17 declaration, or proposed mitigated negative declaration if those
18 comments are received within the public review period.

19 (2) (A) With respect to the consideration of comments
20 received on a draft environmental impact report, the lead agency
21 shall evaluate comments on environmental issues that are
22 received from persons who have reviewed the draft and shall
23 prepare a written response pursuant to subparagraph (B). The
24 lead agency may also respond to comments that are received
25 after the close of the public review period.

26 (B) The written response shall describe the disposition of each
27 significant environmental issue that is raised by commenters. The
28 responses shall be prepared consistent with Section 15088 of
29 Title 14 of the California Code of Regulations, as those
30 regulations existed on June 1, 1993.

31 (3) (A) With respect to the consideration of comments
32 received on a draft environmental impact report, proposed
33 negative declaration, proposed mitigated negative declaration, or
34 notice pursuant to Section 21080.4, the lead agency shall accept
35 comments via e-mail and shall treat e-mail comments as
36 equivalent to written comments.

37 (B) Any law or regulation relating to written comments
38 received on a draft environmental impact report, proposed
39 negative declaration, proposed mitigated negative declaration, or

1 notice received pursuant to Section 21080.4, shall also apply to
2 e-mail comments received for those reasons.

3 (e) (1) Criteria for shorter review periods by the State
4 Clearinghouse for documents that must be submitted to the State
5 Clearinghouse shall be set forth in the written guidelines issued
6 by the Office of Planning and Research and made available to the
7 public.

8 (2) Those shortened review periods may not be less than 30
9 days for a draft environmental impact report and 20 days for a
10 negative declaration.

11 (3) A request for a shortened review period shall only be made
12 in writing by the decisionmaking body of the lead agency to the
13 Office of Planning and Research. The decisionmaking body may
14 designate by resolution or ordinance a person authorized to
15 request a shortened review period. A designated person shall
16 notify the decisionmaking body of this request.

17 (4) A request approved by the State Clearinghouse shall be
18 consistent with the criteria set forth in the written guidelines of
19 the Office of Planning and Research.

20 (5) A shortened review period may not be approved by the
21 Office of Planning and Research for a proposed project of
22 statewide, regional, or areawide environmental significance as
23 determined pursuant to Section 21083.

24 (6) An approval of a shortened review period shall be given
25 prior to, and reflected in, the public notice required pursuant to
26 Section 21092.

27 (f) Prior to carrying out or approving a project for which a
28 negative declaration has been adopted, the lead agency shall
29 consider the negative declaration together with comments that
30 were received and considered pursuant to paragraph (1) of
31 subdivision (d).

32 **SECTION 1.—**

33 *SEC. 2.* Section 21165 of the Public Resources Code is
34 amended to read:

35 21165. (a) When a project is to be carried out or approved by
36 two or more public agencies, the determination of whether the
37 project may have a significant effect on the environment shall be
38 made by the lead agency, and that agency shall prepare, or cause
39 to be prepared by contract, the environmental impact report for
40 the project, if a report is required by this division. In the event

1 that a dispute arises as to which is the lead agency, any of the
2 disputing public agencies, or in the case of a project described in
3 subdivision (c) of Section 21065 the applicant for such project,
4 may submit the question to the Office of Planning and Research,
5 and the Office of Planning and Research shall designate, within
6 21 days of receiving the request, the lead agency, giving due
7 consideration to the capacity of that agency to adequately fulfill
8 the requirements of this division.

9 (b) For the purposes of this section, a “dispute” means a
10 contested, active difference of opinion between two or more
11 public agencies as to which of those agencies shall prepare any
12 necessary environmental document. A dispute exists where each
13 of those agencies claims that it either has or does not have the
14 obligation to prepare that environmental document. The Office of
15 Planning and Research shall not designate a lead agency in the
16 absence of such a dispute.